

1 Richard C. Moreno (SBN 190869)
rmoreno@murchisonlaw.com
2 Anastasia K. Mazzella (SBN 245201)
amazzella@murchisonlaw.com
3 **MURCHISON & CUMMING, LLP**
801 South Grand Avenue, 9th Floor
4 Los Angeles, California 90017-4613
Telephone: (213) 623-7400
5 Facsimile: (213) 623-6336

6 Attorneys for Defendant/Cross-
Complainant, FREIGHTLINER CUSTOM
7 CHASSIS CORPORATION

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 ROLAND NATOLI and BARBARA
NATOLI,

13 Plaintiff,

14 vs.

15 TIFFIN MOTORHOMES, INC., a
16 Corporation and DOES 1 through
100,

17 Defendant.

18
19 FREIGHTLINER CUSTOM
CHASSIS CORPORATION,

20 Cross-Complainant,

21 vs.

22 TIFFIN MOTORHOMES, INC. and
23 ROES 1 through 10, inclusive.

24 Cross-Defendants.

CASE NO. 08 CV 0879 W WMc

**CROSS-COMPLAINT OF
FREIGHTLINER CUSTOM
CHASSIS CORPORATION**

Action Filed: November 29, 2007
Trial Date: None Set.

1 Comes now cross-complainant, FREIGHTLINER CUSTOM CHASSIS
2 CORPORATION, and for a cause of action against the cross-defendants, and
3 each of them, and alleges as follows:

4 **FIRST CAUSE OF ACTION**

5 **(Indemnity Against All Cross-Defendants)**

6 1. That prior to filing of this cross-complaint, plaintiffs ROLAND and
7 BARBARA NATOLI caused to be filed in the Superior Court, County of San
8 Diego, a complaint for Damages, Case No. 37-2007-00082477-CU-MC-CTL
9 against cross-complainant, TIFFIN MOTORHOMES, INC. Plaintiffs allege in
10 said complaint that cross-complainant breached an express warranty covering
11 a 2006 Tiffin Allegro Bay motor home VIN 4UZACLBW26CX60514. Plaintiffs
12 seek recovery against cross-complainant and others as a result of the alleged
13 breach of warranty. The complaint of plaintiffs is incorporated herein by
14 reference for the sole purpose of illustrating its contents.

15 2. Cross-complainant, FREIGHTLINER CUSTOM CHASSIS
16 CORPORATION, has denied and continues to deny all of the allegations
17 contained in plaintiff's complaint. However, should any of the allegations
18 contained therein be true, then said injuries and damages are the result of the
19 active and primary negligence, fault or conduct of cross-defendants, TIFFIN
20 MOTORHOMES, INC. and ROES 1 through 10, inclusive. Cross-complainant
21 denies liability on its part but if cross-complainant is found to have been liable,
22 said actions of cross-defendants, and each of them, were active and primary.
23 Cross-complainant therefore seeks indemnity against cross-defendants, and
24 each of them, for any and all amounts which may be paid by way of judgment,
25 settlement, or any amounts expended for investigations, attorney's fees, court
26 costs, and such other expense as may be incurred in defense of said claim.

1 3. Cross-complainant has appeared and responded in said action and
2 has denied, and continues to deny, the allegations therein. Said response is
3 incorporated herein by reference as though fully set forth at this point.

4 4. Cross-complainant was in no way negligent or responsible for the
5 acts, injuries, or damages alleged in the plaintiff's Complaint. However, if as a
6 result of the matters alleged in the plaintiff's Complaint, the cross-complainant
7 is held liable for all or part of the claims asserted against him, the cross-
8 defendants, and each of them, to the extent of their fault as determined by the
9 court, are obligated to reimburse and will be liable to the cross-complainants
10 for all or any liability so assessed by way of contribution. Accordingly, cross-
11 complainant asserts his right to such contribution.

12 5. If it is found that cross-complainant is liable to any party in said
13 action under any theory of recovery relevant thereto, then cross-complainant
14 alleges that his liability, if any, is passive and derivative only and that the
15 liabilities of the remaining parties defendant and/or cross-defendant was active
16 and primary.

17 6. By reason of the foregoing, cross-complainant is entitled to be
18 indemnified by the remaining parties defendant and/or cross-defendants for
19 any amounts which may in good faith be paid by way of compromise,
20 settlement or judgment and is further entitled to costs and expenses, including
21 reasonable attorneys' fees incurred in connection therewith. The total amounts
22 of said sums have not yet been ascertained and leave will be sought so as to
23 insert the true amount thereof as soon as same is ascertained.

24 **SECOND CAUSE OF ACTION**

25 **(For Declaratory Relief Against All Cross-Defendants)**

26 7. Cross-complainant refers to paragraphs 1 through 6, of its First
27 Cause of Action, and incorporates same by reference as though fully set forth
28 at length.

8. An actual controversy exists between the parties hereto relating to their rights, duties, and liabilities. Cross-complainant contends that if it is held liable and suffers judgment herein, it is entitled to be indemnified as hereinabove alleged and is entitled to judgment over and against cross-defendants, and each of them, in like amount, and, in addition thereto, is entitled to judgment for costs and expenses in defending said action, including reasonable attorneys' fees. This cross-complainant is informed, believes, and thereon alleges that cross-defendants, and each of them, contend to the contrary.

WHEREFORE, cross-complainant prays for judgment as follows:

9. That the court determine the rights, duties, and obligations of the parties to this action;

10. That in the event it be determined that there is any sum due plaintiffs, that the court further declare and adjudge that such liability be that of the cross-defendants, and each of them, and that said cross-defendants are obligated to indemnify cross-complainant as hereinabove alleged.

11. For costs of suit, including reasonable attorneys' fees and investigative costs; and

12. For such other and further relief as to the court may seem just and proper.

DATED: September 8, 2008

MURCHISON & CUMMING, LLP

By: 

Richard C. Moreno
Anastasia K. Mazzella
Attorneys for Defendant/Cross-
Defendant FREIGHTLINER CUSTOM
CHASSIS CORPORATION

J:\RCM\28430\PLD\Cross-Complaint.Tiffin